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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

ARMA YATES, L.L.C., et al., Plaintiffs, vs. ARMA CARE CENTER, LLC, et al., Defendants.	SHORT FORM DISCOVERY MOTION REGARDING SUBPOENA TO NON- PARTY BANGERTER, LUND & ASSOCIATES, INC. Case No. 2:17-mc-00281-DN
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Pursuant to Fed. R. Civ. P. 37 and 45 and Local Rule DUCivR37-1, Plaintiffs Arma Yates, LLC; Florence Heights Associates, LLC (by and through Megan Krull, its sole trustee appointed pursuant to Section 18-805 of the Delaware Code); Hutchinson Kansas, LLC; Kansas Five Property, LLC; Minnesota Associates, LLC; Ogden Associates, LLC, Peabody Associates Two, LLC; Sedgwick Properties, LLC and Wellington Subleasehold, LLC (“Plaintiffs”) move this Court to issue an order compelling compliance with the subpoena issued to non-party Bangerter, Lund & Associates, Inc. (“BLA”).

STATEMENT OF RELIEF REQUESTED

Plaintiffs seek an order compelling BLA to comply with the Subpoena no later than May 7, 2017. Plaintiffs reserve the right to seek sanctions should BLA fail to comply with the Subpoena or this Court's order.

BACKGROUND

Plaintiffs seek to enforce the Judgment in the Illinois Case.¹ On February 14, 2017, Plaintiffs issued a Subpoena, seeking to obtain documents and ESI from BLA related to several judgment debtors from the Illinois Case. *See* Exhibit B. Plaintiffs served BLA with the Subpoena on March 8, 2017. *See* Exhibit C. BLA has failed to comply with the Subpoena. In response to the Subpoena, BLA and its counsel claimed that BLA is excused from complying with its obligations under the Subpoena because it has not obtained the consent of its client(s) to produce the requested documents and ESI. *See* Exhibits D and E.

ARGUMENT

BLA contends 26 U.S.C. § 7216 and Treas. Reg. § 301.7216-2, prohibit tax preparers from disclosing tax return-related documents to Plaintiffs. However, both the statute and the Treasury regulation specifically state that such prohibition does not apply to court orders. *See* 26 U.S.C. § 7216(b)(1)(B) and Treas. Reg. § 301.7216-2(f)(1). Further, the one court that has expressly considered an argument similar to BLA's held that it had no merit. "This Section 7216 ... does not apply when the disclosure is ordered by the court." *Mitsui & Co. (USA) Inc. v. Puerto Rico Water Resources Authority*, 79 F.R.D. 72 (D. P.R. 1978). A federal subpoena, signed and served by an attorney, is considered a court order. *See SEC v. Hyatt*, 621 F.3d 687

¹ On December 16, 2016, Plaintiffs obtained a final judgment against the defendants (the "Judgment") in that certain civil action styled *Arma Yates, LLC et al. v. Arma Care Center, LLC, et al.*, Case No. 1:15-cv-7171, currently pending in the United States District Court for the Northern District of Illinois (the "Illinois Case"). *See* Exhibit A.

(7th Cir. 2010); *See also Moore v. Chase, Inc.*, 2015 U.S. Dist. LEXIS 133381 at *6 (E.D. Cal. Sept. 29, 2015). Although counsel for Plaintiffs advised BLA that its position had no merit, BLA refused to comply with the Subpoena. *See* Exhibit F.

Plaintiffs certify that the parties met and conferred telephonically on April 10, 2017 and by letter to reach agreement without the Court's involvement. *See* Exhibits D-F. Despite Plaintiffs' attempts, BLA has failed to produce any documents.

CONCLUSION

Accordingly, Plaintiffs respectfully request that the Court GRANT Plaintiffs' Motion.

DATED April 11th, 2017.

FABIAN VANCOTT

/s/ David P. Billings

David P. Billings

Melanie S. Grayson

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2017, I caused a true and correct copy to be served via the Court's electronic filing system upon all those entitled to receive such service.

I hereby further certify that on this 11th day of April, 2017, I caused a true and correct copy of the foregoing document to be served by first-class United States mail, with postage fully prepaid upon the following:

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